IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 3

High Court — District Court Appeal from the Family Courts No 164 of 2016

Between

TZQ

… Appellant/Plaintiff

And

TZR

… Respondent/Defendant

And

(1) BUE
(2) BUF

… Interveners

In the matter of Divorce Suit No 5219 of 2014

Between

TZQ

… Plaintiff

And

TZR

… Defendant

JUDGMENT

[Family Law] — [Divorce] — [Ancillary Matters] — [Division of matrimonial assets] — [Maintenance of wife]

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[2019] SGHCF 3

High Court — District Court Appeal from the Family Courts No 164 of 2016
Tan Puay Boon JC
4 April, 11 May 2018

18 January 2019 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This is an appeal ("the Appeal") by the Plaintiff (husband) against the decision of the District Judge ("DJ") in the Ancillary Matters hearing of the divorce proceedings between him and the Defendant (wife) ("parties"). The Interveners are the sons of the Plaintiff, and are the step-sons of the Defendant.

2 Parties were married on 10 July 2003. This was both parties' second marriage. (Although the Defendant said this was the Plaintiff's third marriage,[1] nothing turns on this). While they do not have any children from this marriage, besides the sons of the Plaintiff from his previous marriage, the Defendant has three daughters from her previous marriage. The Plaintiff filed for divorce against the Defendant on 10 November 2014 on the ground of four years'

[1] Defendant's affidavit of 31 July 2018, at para 11.

separation. Interim Judgment was granted on the Defendant's amended counterclaim on 31 March 2016. The ground was the unreasonable behaviour of the Plaintiff. The ancillary matters were heard by the DJ on 24 November 2016, and the orders were given on 29 November 2016.

3 The Interveners had earlier applied unsuccessfully to intervene to set aside the decision of the DJ who ruled that they did not have an interest in the Housing and Development Board ("HDB") flat in [redacted address] ("the matrimonial flat") that they and the parties were residing in (*TZQ v TZR* [2017] SGFC 40 ("GD"), at [6]). The decision was made as there was no documentary evidence to support their claim of having made financial contributions toward its acquisition when they were added as joint tenants with the Plaintiff in October 2012. After the Plaintiff filed the Appeal on 9 December 2016, he applied successfully to admit the documents showing the Interveners' financial contributions to the matrimonial flat. Parties also consented to them intervening in the Appeal. Subsequently, before the hearing of the Appeal, the Interim Judgment was made final on 15 December 2016.

4 The Interveners have on 30 January 2018 commenced separate proceedings in HC/OS 146/2018 ("the Application") to determine their respective shares in the matrimonial flat, and to ask for their shares in the net proceeds of sale to be distributed to them in the event it was sold. They were represented by the same counsel, and took the same position in both the Application and the Appeal.

5 I heard the Application immediately before hearing the Appeal. My decision in the Application was that the 1st Intervener and the 2nd Intervener have a 5.18% and 7.02% beneficial interest in the matrimonial flat, respectively.

The reasons for my decision are set out in *BUE and anor v TZQ and anor* [2018] SGHC 276 ("*BUE v TZQ*").

The Appeal

6 The Plaintiff's Appeal is against the following orders of the DJ in the ancillary matters:

> (a) The matrimonial flat shall be sold in the open market within six months from the date of Final Judgment. Parties shall have joint conduct of the sale and shall jointly value the matrimonial property. The sale proceeds after deducting the relevant expenses incurred in the sale of the property shall be divided 60% to the Plaintiff and 40% to the Defendant.
>
> (b) Alternatively, within two weeks from the date of the Final Judgment, the Plaintiff may confirm in writing if he wishes to retain the matrimonial property. The Plaintiff shall pay the Defendant the sum of $200,000.00 from his CPF ("Central Provident Fund") account or cash or a combination of both within 3 months from the date of Final Judgment as long as this is permitted under the CPF legislation and rules, failing which the flat is to be sold as stated above.
>
> (c) The Defendant shall be entitled to a further sum of $51,549.00 from the Plaintiff's CPF Ordinary account, $20,620.00 from Plaintiff's CPF Medisave account and $30,929.00 from the Plaintiff's CPF Retirement account.
>
> (Although the sum of $30,929.00 is different from the amount of $20,929.00 in Annex 1 of the GD, I will use the former amount as it is the one used in the order of court extracted.)

(d) The CPF Board shall, from the moneys standing to the credit of the Plaintiff in the following CPF Account of the Plaintiff, transfer the amount specified as follows to the Defendant's CPF Account:

Plaintiff's CPF Account to Transfer From	**Amount to Transfer**
Ordinary Account	$ 51,549.00
Medisave Account	$ 20,620.00
Retirement Account	$ 30,929.00

(e) The Plaintiff shall pay a lump sum of $50,000.00 to the Defendant for the wife's maintenance, which is to be paid in monthly maintenance of $850.00 for six months from December 2016 to May 2017 and the balance lump sum of $44,900.00 by 30 June 2017.

7 There is no appeal by the Defendant.

Issues in the Appeal

8 The issues in the Appeal are as follows:[2]

(a) Division of matrimonial assets:

(i) Whether the date of alleged cohabitation or the date of the marriage should have been used as the commencement date for length of marriage;

(ii) Whether the Ancillary Matters date should have been used as the operative date of valuation of assets or should it be the date of separation;

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2 Appellant's Case ("AC"), at para 21.

(iii) Whether the Appellant's amount of CPF moneys acquired prior to marriage and the interest accrued thereon ought to have been included in the pool of matrimonial assets;

(iv) Whether the Judge's valuation of the pool of matrimonial assets was accurate; and

(v) Whether the overall division of the assets is just and equitable in the light of parties' direct and indirect contributions.

(b) Division of the matrimonial flat:

(i) Whether the Appellant's sons' interest should have been excluded from the division of the said flat based on resulting trust principles; and

(ii) Whether the Appellant's direct financial contribution towards the matrimonial flat prior to marriage and the interest accrued thereon ought to have been included in the pool of matrimonial assets.

(c) Maintenance for the Respondent:

(i) The issue of quantum of maintenance for the Respondent; and

(ii) Whether it should be a lump sum maintenance or monthly maintenance; and

(d) Whether an adverse inference should be drawn against the Appellant based on the recent documents filed and admitted; and if so, whether the percentage of 10% in the Respondent's favour was fair or equitable.

Background Facts

9 The Plaintiff and the Interveners' mother were married in 1983.[3] They purchased the matrimonial flat on 1 October 1992.[4] It was later transferred by gift to the Plaintiff in his sole name on 25 September 1996.[5] The Plaintiff and the Interveners have lived in the matrimonial flat since its purchase. The marriage between the Plaintiff and their mother ended in 2003.[6]

10 The Defendant first came into the Plaintiff's life in 1993 (GD, at [3]). At that time, the Interveners were aged eight and six, respectively (GD, at [4a]).

11 The earlier marriage of the Defendant ended in 1995.[7] She and the Plaintiff were married on 10 July 2003 after his divorce earlier that year,[8] and she and one of her daughters from her first marriage moved into the matrimonial flat. The Interveners were then aged 18 and 16, respectively (GD, at [4a]).

12 The Defendant was never given any legal title to the matrimonial flat. She and her second daughter left the matrimonial flat in May 2012 for a trip to India, and came back to Singapore in August that year. They did not return to the matrimonial flat, but went to live with the Defendant's eldest daughter.[9] The Defendant applied for maintenance from the Plaintiff in September 2012, and a consent maintenance order was made on 18 October 2012 for the Plaintiff to

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3 AC, at para 14.

4 AC, at para 74.

5 Defendant's first affidavit of assets and means ("AOM") of 26 July 2016, at p 43.

6 Affidavit of Evidence in Chief filed by the Plaintiff of 11 January 2016, at para 24.

7 Affidavit of Evidence in Chief filed by the Defendant (Respondent) of 29 January 2016, at para 7.

8 AC, at para 13.

9 Respondent's Case ("RC"), at p 23, Sect D, para 5(a).

pay her $850.00 per month from 1 November 2012. She has not gone back to live at the matrimonial flat since she left.

13 On 2 October 2012, the Plaintiff executed a transfer of the matrimonial flat into the joint names of the Plaintiff and the Interveners ("the Transfer"). The Transfer was registered to be "By Gift", and the consideration was stated as "natural love and affection".[10] On 10 October 2012, the Interveners withdrew from their respective CPF accounts a total of $26,073.85 comprising $25,905.05 to redeem the mortgage on the matrimonial flat and another $168.80 for conveyancing and registration fees.[11]

14 The Plaintiff then filed for divorce against the Defendant on 10 November 2014 on the ground of four years' separation.

Division of Matrimonial Assets (including the matrimonial flat)

15 In *NK v NL* [2007] 3 SLR(R) 743 ("*NK v* NL") at [31], the Court of Appeal described the approach for dividing the matrimonial assets to involve the identification, assessment, division and the apportionment of these assets. I will deal with the issues raised in the Appeal by the Plaintiff at [8] above under the respective steps in that approach.

Division in long single-income marriages

16 To divide the matrimonial assets, the DJ had applied the structured approach referred to in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*"), *ie* to obtain the average contribution of parties after considering their direct and indirect contributions and assigning proper weightages to these contributions.

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10 Interveners' affidavit of 30 January 2018, at para 4 and pp 9 – 16.

11 AC, at para 85; Core Bundle ("CB"), at pp 100 – 103.

She also applied the "broad brush" approach that decided cases preferred (GD, at [2]).

17 After the DJ's decision was delivered on 29 November 2016, the Court of Appeal handed down on 3 March 2017 its decision in *TNL v TNK* [2017] 1 SLR 609 ("*TNL v TNK*"), a case which involved a 35-year marriage where the husband supported the family economically while the wife looked after the household. The court recognised that the *ANJ v ANK* approach in the context of Single-Income Marriages "tends to unduly favour the working spouse over the non-working spouse" (at [44]), and "should *not* be applied to Single-Income Marriages". The court further expressed the view that it was in general agreement with the approach of tending towards equal distribution of matrimonial assets in "*long* Single-Income Marriages" (at [48] and [54]), and upheld the decision of the High Court to order a 50:50 division of the matrimonial assets in that case.

18 As the Defendant did not work throughout the marriage, I therefore treat it as a single-income marriage. In the light of the decision in *TNL v TNK,* it becomes necessary to review the results of the approach used by the DJ (which is more appropriate for dual income marriages) to see if a fair and equitable decision has been arrived at.

19 The DJ had also divided the matrimonial flat separately from the rest of the matrimonial assets, and after considering parties' contributions in relation to each class, arrived at percentages for division for them which were very similar (GD, at [6] and [7]). This is the classification methodology described in *NK v NL* at [32]. I do not think this method is necessary for this case, as the respective contributions of parties are not so different for the various assets in each of the two classes. No one asset was acquired through the exceptional

efforts of one of the parties, but were all slowly built up over time. The global assessment methodology would have sufficed. Moreover, as noted by the Court of Appeal in *NK v NL*, the two methodologies are likely to arrive at the same result, which was the case here.

Identification of the Matrimonial Assets

The date of determination of pool of matrimonial assets

20 In *Yeo Chong Lin v Tay Ang Choo & another appeal* [2011] 2 SLR 1157 ("*Yeo Chong Lin v Tay Ang Choo*") at [39], the Court of Appeal held that the cut-off date for the division of matrimonial assets can be the date of separation, date of filing of divorce, date of interim judgment, or the date of hearing of ancillary matters. This is because the circumstances of acquiring an asset by a spouse are so varied, and it is best left to the court to determine where the line should be drawn after taking account all the circumstances (at [32]). Indeed, multiple dates are possible, and the adoption of an operative date or dates might not be as critical as arriving at a just and equitable division (at [36] – [40]).

21 The parties separated in 2012, the divorce petition was filed in 2014 and the Interim Judgment was granted in 2016. The Plaintiff's position is that the determination should be at the date of separation,[12] while the Defendant was of the view that it should be the date of the Interim Judgment because the ground upon which the divorce was granted was the unreasonable behaviour of the Plaintiff.[13] The Defendant also relied on *ARY v ARX* [2016] 2 SLR 686 ("*ARY v ARX*"), where the Court of Appeal stated that to determine the pool of matrimonial assets, "unless the particular circumstances of justice of the case warrant it, the *starting point* or *default position* should be the date that interim

12 AC, at para 30.

13 RC, at p 6, Sect D, para 1(b).

judgment is granted" (at [31]). In that case, however, the Court of Appeal agreed with the High Court that the fairer date was the date on which the ancillary matters proceedings were commenced. This was because, besides caring for the children (which was not exceptional), some of the husband's assets which were acquired after the interim judgment date were very substantial, and could be attributed to the wife's indirect contributions before the interim judgment (at [42]).

22 The DJ chose the date of the Interim Judgment (GD, at [7]), and included in the pool of matrimonial assets – the matrimonial flat, the Plaintiff's car, and the CPF and other savings of parties. I accept that the choice is within her discretion, so long as adjustment are made to arrive at a just and equitable division. I also note that in the submissions at the hearing, the Plaintiff accepted that the date of division should be the date of the Interim Judgment.[14]

The matrimonial flat

23 Although the matrimonial flat was first acquired by the Plaintiff using his CPF funds before the parties marriage in 2003, it has since become a matrimonial asset by operation of s 112(10)(*a*)(i) of the Women's Charter (Cap 353) ("WC"). While the Interveners became joint tenants with the Plaintiff around the time of the separation in 2012, when it was fully paid up, the Plaintiff has retained a beneficial interest in it. The matrimonial flat therefore remains a matrimonial asset which is available for division.

The car

24 The car was purchased around April 2016. It is the Plaintiff's submission that it should be excluded because it was paid for using the CPF savings that he

[14] Notes of Argument of 11 May 2018, at p 2.

withdrew. Accordingly, to include the car in the pool of matrimonial assets would amount to double counting if the CPF savings that were withdrawn were also included in the pool.[15] However, as submitted by the Defendant, the car was purchased before the Plaintiff withdrew his CPF savings in August 2016, and the hire purchase agreement dated 14 April 2016 showed that a cash payment of $69,999.00 was made and hire purchase repayments of $557.00 per month started in May 2016. The source of funds for the purchase could not have been the Plaintiff's CPF savings, and would have been from his other savings. I therefore accept the Defendant's submission that there is no double counting of CPF savings when the car is included in the pool of matrimonial assets.

25 Where assets acquired after the separation could be attributed to the Plaintiff alone, they should not be included in the pool of matrimonial assets. Since the car was bought using his savings, if there is evidence that it was bought using savings accumulated after the separation, it would be excluded from the pool of matrimonial assets. As there is no evidence of what the source of funds for the purchase of the car was, I hold that the car is a matrimonial asset that is available for division.

The CPF and other bank savings

26 The issue in question is whether the Plaintiff's amount of CPF moneys acquired prior to marriage and the interest accrued thereon ought to have been included in the pool of matrimonial assets.

27 In the present case, the CPF savings of the Plaintiff were acquired both before and during the marriage of parties. He submitted that the savings in his CPF Account that were accumulated before their marriage in July 2003 should

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15 Notes of Argument of 11 May 2018, at p 3.

be deducted. At that time, the total savings in the Plaintiff's CPF Account were $159,256.03.[16]

Balance as at:	**Ordinary Account ($)**	**Special Account ($)**	**Medisave Account ($)**	**Total ($)**
June 2003	125,259.88	5,996.15	28,000.00	159,256.03

28 The Plaintiff further submitted that the interest on this sum should also be deducted. Accordingly, the amount to be deducted is $236,292.30, which includes interest until June 2016.[17]

29 For the reasons set out later in this judgment under the Assessment of the Matrimonial Assets, I am of the view that the CPF savings of the Plaintiff which were acquired before the marriage that have not been commingled with other matrimonial assets acquired later do not become matrimonial assets. Since these savings acquired before the marriage remained in the Plaintiff's CPF Account, and were not merged into other assets, they will be deducted from the pool of matrimonial assets.

30 As for the interest on that sum, I agree in principle that it should be deducted. Since the pool of CPF savings that is available for division would also have included the interest element until the date of division, where the principal sum of the CPF savings that were acquired before the marriage is deducted, the corresponding interest should be deducted as well.

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16 CB, at p 92.

17 AC, at para 18 and p 68.

31 I would similarly exclude the Defendant's CPF savings from before her marriage to the Plaintiff and interest on this sum from division if there is any evidence of what it was.

32 I will take the above into consideration when I assess the amount of the CPF savings to be included in the pool of matrimonial assets.

33 The Defendant had owned a flat that she sold in 2004 for $83,795.13.[18] The Plaintiff submits that the proceeds of sale should be subject to division. Although I accept this is correct in principle, it should be noted that the flat was sold some ten years before the matrimonial assets were to be divided. There is no evidence of how much was left by the time of the Interim Judgment, or even at the time of the separation or the commencement of divorce. There is also a dispute between parties on how the money was spent. The Defendant said that the Plaintiff had used most of it, with $20,000.00 spent on the renovations of the matrimonial flat as well. The Plaintiff denies this. He also pointed out the Defendant only exhibited bank statements for April 2007 to December 2008.[19] In my view, the sum was not so large that an explanation is required on where it went. If $83,795.13 was spent uniformly over ten years, the amount spent each year would have been about $8,300.00, or $690.00 each month. It can be seen that little, if anything at all, would have been left by 2016.

34 In the absence of clear evidence how much of it still remains, I do not think the DJ was wrong to have excluded the proceeds of sale of the Defendant's flat from the pool of matrimonial assets.

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18 Defendant's first AOM of 6 June 2016, at p 60.

19 Plaintiff's affidavit for ancillary matters of 25 October 2016, at para 31.

Assessment of the Matrimonial Assets

35 The issue is which date should have been used as the operative date of valuation of assets – the Ancillary Matters date or the date of separation.

The date of valuation

36 The Court of Appeal has affirmed in *TND v TNC and another appeal* [2017] SGCA 34 ("*TND v TNC*") at [19] – [20] that the general position is that the date of the ancillary matters hearing is the date of the valuation of the matrimonial assets, unless such departure is "warranted by the facts" (*TDT v TDS* [2016] 4 SLR 145 ("*TDT v TDS*") at [50] and *ARY v ARX* [2016] 2 SLR 686 at [36]). I keep this in mind when ascertaining the values or the matrimonial properties that have been included for division.

37 The next issue I turn to is whether the DJ's valuation of the pool of matrimonial assets was accurate. The valuation of each asset will now be addressed in turn.

The matrimonial flat

38 I first consider whether the Interveners' interests should have been excluded from the division of the said flat based on resulting trust principles.

39 The beneficial interests of the Plaintiff and the Interveners in the matrimonial flat have been determined in the Application. There, I found that the Plaintiff, the 1st Intervener and the 2nd Intervener to have shares of 87.79%, 5.18% and 7.02%, respectively. I also held that in the event that the matrimonial flat is sold, the net proceeds of sale would be distributed to them according to their shares. Further, as they had used their CPF savings to acquire their interests in the matrimonial flat, they would be required to return to their respective CPF

accounts the savings that they had used in accordance with the rules governing such transactions.

40 However, while the Plaintiff's share of the net proceeds of sale of the matrimonial flat would be what is available for apportionment upon the sale, what is to be included in the pool of matrimonial assets for division is a different matter.

41 As I have stated in my judgment in the Application, when the acquisition of the Interveners' beneficial interest in the matrimonial flat was examined against the backdrop of the events that had taken place in 2012, the timing was just too coincidental. The Plaintiff had executed the transfer document on 2 October 2012, very soon after the Defendant, having left the matrimonial flat in August 2012, filed a maintenance application in September 2012, and just before the grant of a consent maintenance order on 18 October 2012. The Plaintiff then filed for divorce on 10 November 2014 on the ground of four years' separation.

42 The marriage was obviously failing rapidly. As this is not the Plaintiff's first divorce, he would certainly have been aware of how matrimonial assets are dealt with in a divorce. Moreover, the Plaintiff has stated that he had made the Interveners joint tenants of the matrimonial flat with him because he wanted to let them feel a sense of ownership, and to protect their interest in the matrimonial flat. Indeed, it was his submission in the Application that each Intervener acquired an immediate one-third share in the matrimonial flat as joint tenants. I therefore find that the Plaintiff was taking steps to reduce the Defendant's potential share of the matrimonial assets in the event that divorce proceedings were commenced.

43 In *TNL v TNK*, the Court of Appeal considered how the proceeds of sale of a property ($331,057.77) that was sold two months before the wife commenced divorce proceedings that the husband had disposed of should be dealt with. The husband there had used $43,000.00 to buy a car for the younger son, $18,000.00 to partially repay a car loan, $20,257.00 to help the younger son purchase a HDB flat, $63,000.00 as a loan to a friend (who has not repaid the loan), and $60,000.00 to buy shares in a friend's name.

44 The court held at [24] that:

> ..... the issue is how the court should deal with substantial sums expended by one spouse during the period: (a) in which divorce proceedings are imminent; or (b) after interim judgment but before the ancillaries are concluded. We are of the view that if, during these periods, and whether by way of gift or otherwise, one spouse expends a substantial sum, this sum must be returned to the asset pool if the other spouse is considered to have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure either before it was incurred or at any subsequent time. Furthermore, this remains the case regardless of whether: (a) the expenditure was a deliberate attempt to dissipate matrimonial assets; or (b) the expenditure was for the benefit of the children or other relatives. The spouse who makes such a payment must be prepared to bear it personally and in full. In the absence of consent, he or she cannot expect the other spouse to share in it. What constitutes a substantial sum is, of course, a question of fact and we do not propose to lay down a hard and fast rule in this regard, except to emphasise that it is not intended to include daily, run-of-the-mill expenses.

45 The Interveners were included as joint tenants in 2012, and had been allowed to acquire shares in the beneficial interest in the matrimonial flat. The event was proximate enough in time to the divorce proceedings started by the Plaintiff in 2014, which was on the ground of four years' separation. Therefore, even if the Plaintiff was not taking steps to reduce the Defendant's share of the matrimonial flat, the share of interest in the matrimonial flat that the Plaintiff has foregone as a result of including the Interveners as joint tenants has to be

returned to the pool of matrimonial assets for division. This means that the entire matrimonial flat is in the pool of matrimonial assets. While the Interveners will still get their respective shares of the proceeds of sale when the matrimonial flat is sold, those amounts will have to come from the Plaintiff's share of the proceeds of sale. This will be dealt with below in the Apportionment of Matrimonial Assets.

46 The next issue is whether the Plaintiff's direct financial contribution towards the matrimonial flat prior to marriage and the interest accrued thereon ought to have been included in the pool of matrimonial assets.

47 The Plaintiff's position is that the CPF contributions that he paid towards the acquisition of the matrimonial flat before the marriage should be excluded from division. He relied on *BGT v BGU* [2013] SGHC 50 ("*BGT v BGU*") to support his submission.[20]

48 In *BGT v BGU*, the husband had bought an apartment in his sole name shortly before he married the wife in 1995, using his CPF savings and a bank loan. They lived in it until 2001, when they moved into a house bought in their joint names. The husband, who paid for the mortgage solely using his CPF savings, sold the apartment about one month before the wife filed for divorce. A sum of $678,996.00 was deposited into his CPF account. Although the High Court held that the apartment was not a matrimonial asset (see [28]), the money that the husband expended after the marriage to pay off the mortgage would have to be included as part of the matrimonial assets (see [29]). This is because if the money was not used to pay off the mortgage, it would have remained in the CPF account and will be available for division. The High Court therefore

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[20] AC, at para 17.

included for division the $678,996.00 less the husband's CPF savings of $138,834.48 that were acquired before the marriage.

49 The Court of Appeal, in its decision in *TND v TNC*, held that assets that become matrimonial assets because of the operation of s 112(10)(*a*)(i) (*ie*, assets acquired before the marriage that became so converted) need not be divided in the same way as matrimonial assets under s 112(10)(*b*) (*ie,* assets acquired during the marriage). The court would have the discretion to divide it in such manner as may be most equitable bearing in mind the nature of the asset, how it was paid for (*ie,* whether it was partly paid for during the course of the marriage) and the length of time during which the parties ordinarily used or enjoyed it during the marriage (at [35]).

50 Unlike the property in *BGT v BGU* which had already been sold at the time of the division, the matrimonial flat in the present case remained registered to the Plaintiff and the Interveners at the time of the division and the CPF savings used by the Plaintiff to acquire the matrimonial flat were still commingled in the property. In the circumstances, these direct contributions of the Plaintiff should not be excluded before the division. It is only when these premarital direct contributions have reverted to their original form at the time of division, *eg*, when the matrimonial asset has been sold and the proceeds of sale returned to the CPF account, such as in *BGT v BGU*, that they should be excluded from division. Also, by the time of the time of the separation in 2012, the parties had been living in the matrimonial flat for 9 years if the year of the marriage in 2003 is taken as the starting point, and 19 years, if the starting date of the cohabitation chosen by the DJ (1995) is taken as the starting point. During those years, the Plaintiff has used his CPF savings to pay for the mortgage. It is therefore equitable for the entire value of the matrimonial flat to be included, as

the Defendant can be said to have contributed indirectly to the accumulation of those savings through looking after the family and household.

51 At the time of the Ancillary Matters hearing, the matrimonial flat was fully paid up. Parties have agreed the valuation of the matrimonial flat to be $500,000.00. Although this was an estimated sum,[21] the DJ has taken this as the value in making the order for the division of matrimonial assets.

52 Since I have found at [45] above that the entire matrimonial flat is to be included in the pool of matrimonial assets, it follows that the amount that is available for division is the agreed sum of $500,000.00.

The car

53 As I have found at [25] above, the car is a matrimonial asset that is available for division. The DJ has used $54,167.00 as the value of the car (GD, at [6]). This was the "Price of the Goods" that is stated in the hire purchase agreement, and did not include the "Price of the Certificate of Entitlement", which was valued at $45,000.00. The agreement stated that the "Cash Price of the Goods" was $99,167.00, which was the total of the two amounts. This would have been the value of the car at the time of the purchase.

54 By the time of the Ancillary Matters hearing in November 2016, the car that was bought in April 2016 was only about seven months old. I do not think the DJ was correct to find that its value has depreciated by almost half. In my view, a more correct depreciation would be about 10%, and the value of the car at the time of the Ancillary Matters hearing would thus be $90,000.00. At the start of the hire purchase agreement, the Plaintiff had to pay 59 monthly

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[21] Plaintiff's affidavit of means 1, at para 7(d)(2).

instalments of $557.00. As he would have paid seven instalments by November 2016, the remaining loan was $28,964.00 ($557.00 x {59 - 7}). The net value of the car was thus $61,000.00 ($90,000.00 - $28,964.00, rounded down). I therefore include this amount into the pool of matrimonial assets for division.

The CPF and other bank savings of the Plaintiff

55 The CPF savings of the Plaintiff were acquired over the years, both before and after his marriage to the Defendant. When the Plaintiff turned 55 in March 2010, he became eligible to withdraw the savings in his CPF Account that year, but did not do so. There is no evidence of what the amount was, or if he made any withdrawals. By 28 June 2016, the balances in his CPF Account were as set out in the table below:[22]

Balance as at:	**Ordinary Account ($)**	**Special Account ($)**	**Medisave Account ($)**	**Retirement Account ($)**	**Total ($)**
28 June 2016	221,767.07	2,098.68	49,800.00	152,450.32	426,116.07

56 Whilst in the midst of the divorce proceedings, after Interim Judgment was granted on 31 March 2016 and during the course of the Ancillary Matters hearings, the Plaintiff withdrew on 1 August 2016 from his various CPF accounts the following amounts:[23]

Withdrawal date	**Ordinary Account ($)**	**Special Account ($)**	**Medisave Account ($)**	**Retirement Account($)**	**Total ($)**
1 August 2016	226,645.66	2,436.01	1,156.89	-	230,238.56

22 Plaintiff's first AOM, at para 13.

23 Plaintiff's affidavit of 18 July 2017, at p 69.

57 By 10 April 2017, the balances in the Plaintiff's CPF Account were as follows:[24]

Balance as at:	**Ordinary Account ($)**	**Special Account ($)**	**Medisave Account ($)**	**Retirement Account ($)**	**Total ($)**
10 April 2017	7,833.92	1,679.72	52,000.00	159,448.36	220,962.00

58 The Plaintiff claimed that most of the moneys were spent as follows:[25]

Purpose	**Approximate amount**
Paying of sons' debts	$70,000
Gift to elder son	$20,000
Gift to younger son	$20,000
Gift to his mother	$30,000
Purchase of car	$70,000
Cancer treatment	$20,000
Total	**$230,000**

59 Except for the $20,000.00 for his cancer treatment, the other amounts appeared to have been used for items that were discretionary in nature. With regard to the $70,000.00 used to pay the Interveners' debts, there is nothing in the evidence to show why the Plaintiff had an obligation to discharge the debts, or if there was any pressing need to do so.

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24 Defendant's affidavit of 13 March 2018, at para 12 and pp 62, 63.

25 Plaintiff's affidavit of 18 July 2017, at para 26.

60 As the CPF moneys were withdrawn by the Plaintiff in August 2016 and disposed of him right in the middle of the divorce proceedings, it is patently clear that he was dissipating the matrimonial assets so that they would no longer be available for division. For the same reasons I have decided that the entire matrimonial flat should be regarded as part of pool of matrimonial assets, I was of the view that the CPF moneys, including the amounts withdrawn by the Plaintiff, should still be included as part of the pool of matrimonial assets available for division. Further, even if the Plaintiff was not dissipating the matrimonial assets, based on the decision of the Court of Appeal in *TNL v TNK* (at [24]), the amount withdrawn will have to be returned to the pool of matrimonial assets for division. I would, however, exclude the $20,000.00 which the Plaintiff spent on cancer treatment, from the pool. Even though this expenditure does not fall into the category of "daily, run-of-the-mill expenses" referred to by the Court of Appeal, it is a necessity for the Plaintiff and should be excluded.

61 The Plaintiff also relied on *BGT v BGU* (at [29]) as authority that the CPF savings that were accumulated by him before the marriage should be excluded from the matrimonial assets that are available for division.[26] I agree. Under s 112(10) of the WC, property acquired before the marriage would not be a matrimonial asset unless it has been substantially improved during the marriage by the other party of both parties to the marriage. Accordingly, CPF savings acquired before the marriage would be excluded. This is because they would not have been improved during the marriage by the Defendant. Also, as I stated at [30] above, the interest on this sum would have to be deducted as well.

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[26] AC, at paras 61 to 63.

62 In the result, I was of the view that $169,823.77 (being $426,116.07 - $236,292.30 - $20,000.00) should properly be included in the pool of matrimonial assets available for apportionment.

63 While I would treat the bank savings of the Plaintiff in the same manner, in the absence of any evidence to show when it was acquired, I will include the entire amount of $7,000.00[27] in the pool of matrimonial assets.

The CPF savings of the Defendant

64 Since there is no evidence of what the Defendant's CPF savings from before the marriage was, I will retain the full sum of $3,400.00 in the pool of matrimonial assets. In doing so, I have also taken note that the amount is relatively small when compared to the total pool, and its exclusion would not have any substantial impact on the final division.

65 Accordingly, the pool of matrimonial assets available for division will be $741,223.77, based on the amounts that are set out in the table below:

Asset	**Plaintiff ($)**	**Defendant ($)**	**Total ($)**
Matrimonial flat	500,000.00	-	500,000.00
Car	61,000.00	-	61,000.00
CPF savings	169,823.77	3,400.00	173,223.77
Bank savings	7,000.00	-	7,000.00
Total	**737,823.77**	**3,400.00**	**741,223.77**

27 Plaintiff's first AOM, at para 12.

Division of the Matrimonial Assets

Direct contributions

The matrimonial flat

66 By the time of the hearing of the ancillary matters, the matrimonial flat was fully paid up using payments from the Plaintiff and the Interveners. The amounts they paid are as follows (*BUE v TZQ*, at [18]):

Contributor	**Amount**
Plaintiff ($)	186,271.24
1st Intervener ($)	11,000.00
2nd Intervener ($)	14,905.05
Total ($)	**212,176.29**

67 While I have found that the entire matrimonial flat is a matrimonial asset, I am of the view that it is only the amount paid by the Plaintiff towards its acquisition that should be included as his direct contributions for the matrimonial flat. The Interveners' payments cannot be counted as part of the Plaintiff's contributions as these were not loans to him, but amounts they paid to acquire their respective interests in the matrimonial flat. Indeed, at the time the Interveners made their payments, the Plaintiff had enough CPF savings to discharge the mortgage himself. Accordingly, the Plaintiff's direct contribution was $186,271.24.

68 The Defendant claimed that the proceeds of sale of the matrimonial flat in her 1995 marriage were paid into a bank account which the Plaintiff became a joint account holder of, and he had availed himself to the money. She further

claimed that the amounts he withdrew included $20,000.00 that he spent on the renovation of the matrimonial flat when she moved in after their marriage.

69 In *ANJ v ANK*, the Court of Appeal explained that the ratio of direct contributions represents "each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition *or improvement* of the matrimonial assets" (at [22]). Thus contributions to renovations can be considered as direct contributions if it can be shown that the renovations had improved the matrimonial flat. This would usually be the case when the asset is first acquired, and renovations are needed to make it habitable. For renovations which take place long after its acquisition, evidence of improvement would be necessary to show that the matrimonial asset was indeed improved by the renovation. In the present case, there was no such evidence. Although the DJ did find that the Defendant had contributed $20,000.00 towards renovation, and treated the amount as her direct contributions, I am unable to do so as there was no evidence that the renovations did improve the matrimonial flat.

70 Moreover, the only documentary evidence that the Defendant furnished in support was for the cleaning of the air conditioners in the matrimonial flat. She explained that she was unable to obtain the necessary documents because she could not gain access to the matrimonial flat where these were kept. While I was reluctant to overturn the finding of fact by the DJ, I could only consider the amount as part of her indirect contributions instead.

The car

71 The DJ has used the value of the car ($54,167.00) as the direct contribution of the Plaintiff in the acquisition of the car. I do not think this is

correct. The direct contributions of a matrimonial asset are the amounts spent by parties to acquire it. In this case, the Plaintiff had paid a cash sum of $69,999.00 at the time of purchase, and monthly instalments of $557.00 from 14 May 2016. By the hearing of the ancillary matters in November 2016, he would have paid instalments of $3,899.00 ($557.00 x 7). His contributions would therefore have been $73,898.00 ($69,999.00 + $3,899.00), and not $54,167.00. I will use this amount as the Plaintiff's direct contributions for the car.

The CPF and bank savings

72 As stated above, the CPF savings of the parties that formed part of the pool of matrimonial assets is $169,823.77 for the Plaintiff and $3,400.00 for the Defendant, and the bank savings of the Plaintiff is $7,000.00. I will treat them as parties' respective direct contributions towards the acquisition of these assets.

Indirect contributions

73 The length of the marriage is generally a factor to be considered when dealing with the division of matrimonial assets to establish a party's indirect contributions to the marriage. An issue which arose in this respect was whether the date of alleged cohabitation or the date of the marriage should have been used as the commencement date for length of marriage. Although the parties registered their marriage in 2003 and Interim Judgment and Final Judgment were granted in 2016, making it a marriage of 13 years, the DJ has treated this a marriage of 20 years (GD, at [6]). This is because she found that the parties were cohabiting since 1993, before their marriage was registered. This was based on the uncontested Defence and Counterclaim (Amendment No 1) before the affidavits filed in the ancillary matters averred otherwise. However, the DJ chose as the starting year 1995, when the Defendant's previous marriage ended.

She took the end of the marriage to be when Interim Judgment was obtained, *ie* 2016 (GD, at [7]).

74 The Plaintiff disputed that he and the Defendant had started cohabitation from 1993/1994, and that she was helping him to look after the Interveners. He said that she was only a paid baby sitter after his previous wife left in 1994, and it was his mother who was looking after them. The Interveners were only either eight and six, or nine and seven, in 1993/1994. The Plaintiff claimed that at the time his wife left him, they were independent and was able to walk to their school nearby, and he was able to buy them meals, wash their clothes, and care for them when he returned from work. The Defendant's version was that the Plaintiff often stayed away for weeks. The Interveners frequently missed their school bus and called her, and she would have to rush to bring them to school. They would also mess up the kitchen when they tried to cook, and she had to clean up after them as they were afraid of being disciplined by the Plaintiff.

75 Having regard to the evidence of the parties, I do not think that the DJ was wrong to conclude that parties had started cohabitation in 1993/1994. The Plaintiff was then employed in a petrol refinery as a technician doing shift work on an island off the southern shore of Singapore.[28] Even if he was able to return home after his shift every day and did not stay away for long periods, he would have returned home at different times of the day depending on what shift he was working. He could not have done all that he was claiming to do, and managed without help. The admission by the Plaintiff that one of the Interveners had gone to live for a few months with the Defendant in 1999 after parties had a quarrel and she moved out was also evidence of the close relationship between her and

[28] CB, at p 74 (Plaintiff's affidavit of 22 December 2015, at p 3).

the Interveners, and showed that it was she and not the Interveners' grandmother who was looking after them.

76 Moreover, the Plaintiff had his dates wrong. He said that the Defendant was divorced only in 1997 or 1998, and set out the events in their relationship from 1994 till then which led to her divorce.[29] However, the Defendant was actually divorced in 1995, and her version of events in her life with the Plaintiff and the Interveners, whom she was spending more time with from 1993/1994,[30] contained the more likely reasons for her divorce.

77 In any case, while the Plaintiff had earlier disputed when parties started cohabitation, he appeared to have accepted the finding of the DJ that it began in 1993.[31]

78 Accordingly, I do not think that the DJ was wrong in choosing 1995 as the start of the period of the Defendant's indirect contributions. By then, the Plaintiff's previous wife had left him and their two Interveners in 1994.[32] The Defendant's earlier marriage was dissolved, and there was no question of the Defendant making indirect contributions to two marriages at the same time. This is of course provided that there is evidence of her indirect contributions from that year.

79 However, the Plaintiff maintained that the period to be considered should instead be from 2003, the year of the marriage, to 2012,[33] a period of nine years.[34] The Plaintiff relied on a number of cases to support his submission.

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29 CB, at p 75.

30 CB, at p 72.

31 AC, at para 34.

32 AC, at para 19.

80 In *Koh Bee Choo v Choo Chai Huah* [2006] SGHC 177 ("*Koh Bee Choo v Choo Chai Huah*"), the parties had cohabited together for eight years before they registered their marriage in 1984. During that period, the wife worked as a computer typist while the husband was a dentistry undergraduate. The reported judgment did not indicate whether she had made any contributions to the relationship during their cohabitation. The High Court had treated the marriage as one of 20 years (at [27]), which was from the registration of the marriage to *decree nisi.*

81 In *Smith Brian Walker v Foo Moo Chye Julie* [2009] SGHC 246 ("*Smith Brian Walker v Foo Moo Chye*") the wife had helped the husband to secure a consultancy project during the period of cohabitation before their marriage. He received from this a substantial commission that he used to fund the purchase of a property. The High Court accepted the indirect contribution of the wife and awarded her 33% of the property.

82 The Plaintiff also referred to *Foley v Foley* [1981] 3 WLR 284 ("*Foley v Foley*"), at p 288 where the English Court of Appeal referred to *Campbell v Campbell* [1976] 3 WLR 572 ("*Campbell v Campbell*"),[35] which refused to treat the period of cohabitation as being included in "the duration of the marriage" within the meaning of s 25(1)(d) of the Matrimonial Causes Act 1973 (UK). That section provides that for both financial provision orders (*ie* maintenance) and property adjustment orders (*ie* division of assets), the court should take into account the "duration of the marriage".

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33 AC, at para 20.

34 AC, at para 49.

35 AC, at paras 44 to 47.

83 The factors to be considered when dividing matrimonial assets are set out in s 112(2) of the WC. These factors are non-exhaustive and, more importantly, there is no requirement to consider the duration of the marriage.

84 While the length of marriage in *Koh Bee Choo v Choo Chai Huah* was taken to have started from the date of registration of the marriage, it is not clear from the judgment what the reason for the choice was. It is therefore not clear authority for the proposition that the length of the marriage should be calculated from the date of registration.

85 I also do not think that *Smith Brian Walker v Foo Moo Chye* is authority that only tangible and significant contributions made before a marriage are recognised as indirect contributions. While that may be the case when a particular asset is being considered, it does not necessarily apply to assets that are accumulated over a period, *eg* CPF savings, where the non-working spouse's indirect contributions help in such accumulation by the working spouse.

86 Nor do I think *Foley v Foley* and *Campbell v Campbell* assist the Plaintiff's submission that the Defendant's contributions to the family before their marriage have to be disregarded, given the difference between the statutes on what is to be taken into consideration. In any case, I decline to follow the approach adopted in those cases.

87 I therefore agree with the DJ that the period of cohabitation can be taken into account when deciding the division of the matrimonial assets. This was indeed the approach taken by the High Court in *JAF v JAE* [2016] 3 SLR 717, a case that was not referred to by parties, at [20] – [21]. The duration of 20 years was within the discretion of the DJ to decide based on the evidence, which showed that the Defendant had in fact looked after the Plaintiff and the

Interveners, especially when they were younger. The 2nd Intervener has also acknowledged that the Defendant showed the Interveners love and care, and helped to look after them.[36]

88 As I have accepted the decision of the DJ to treat the length of marriage between parties to be 20 years (from 1995, when the Defendant's previous marriage ended, to 2014, when the Plaintiff commenced divorce proceedings), I do not think that the 50% indirect contribution she attributed to the Defendant was wrong. Even if the period had ended in 2012, when parties started living apart, a 50% indirect contribution was still within her discretion to make. Accordingly, I do not find it necessary to change the percentage of indirect contribution by the Defendant.

Whether an adverse inference should be drawn against the Plaintiff

89 Before the DJ, the Defendant submitted that an adverse inference should be drawn against the Plaintiff for failing to disclose various documents that he was required to disclose under an order of court, which he failed to do so. She submitted that her share of the matrimonial assets should consequently be increased by 20%. After reviewing the positions of parties, the DJ accepted that an adverse inference should be drawn, and ordered the Defendant's share of the matrimonial assets to be increased by 10%. Her views are set out in Annex 2 of the GD.

90 The DJ did not think it necessary to draw any adverse inference over the non-disclosure of certain classes documents. As there is no appeal by the Defendant, I will not deal with them. The DJ did draw an adverse inference on the non-disclosure of the following documents: documents relating to the

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[36] 2nd Intervener's affidavit of 9 January 2015, at para 8.

employment and re-employment which would show the terms of remuneration of the Plaintiff; his payslips for 2015 and 2016; the retirement benefits he received in 2015; statements of Central Depository ("CDP") Account for 2014-2016 which would show his shares portfolio; 2016 Notice of Assessment from the Inland Revenue Authority of Singapore ("IRAS"); statements on his loan from DBS Bank Ltd ("DBS"); bank statements from 2014-2016; credit card account statements from 2014-2016; and the DBS debit card statements from 2014-2016. She did so even though the Plaintiff selectively disclosed certain documents, *eg* certificate of service with his former employer; pay slips of certain months; bank account balances of certain months; and credit card statements of certain months. His position was that he was not in possession of the rest. He also blamed the non-furnishing of documents on his former solicitors.

91 As submitted by the Defendant, the Plaintiff had not provided the documents which are needed to show his financial status.[37] These included his payslips, letters from his former employer which would confirm if he did receive any retirement benefits when he retired after working for 40 years, or had other assets that he did not disclose.

92 I agree with the Defendant that the documents could have been obtained by the Plaintiff if he had wanted to. For example, even though he has now left his employment, he could have obtained a written confirmation from his former employer to support his position. Statements from banks, credit card companies, CDP and IRAS could also be obtained if requests were made. Even if such documents were not forthcoming, there was nothing to show that he has even tried to ask for them.

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[37] Notes of Argument on 11 May 2018, at p 10.

93 The Plaintiff has since belatedly furnished the documents listed in para 5 of the Appellant's Case. These are: his payslips for 2015 (April to November), 2016 (March to July and September to December) and 2017 (March to April); photograph of the gold medal he received upon his retirement in 2015; letter from the Singapore Exchange ("SGX") to show that he does not and did not have any SGX accounts; 2016 Notice of Assessment from IRAS; CPF statements for 2015 and 2016; CPF Investment Scheme yearly statements for 2014 to 2016; letter from DBS stating that he does not have a DBS Cashline account, nor certain credit card accounts; monthly statements of his POSB current and savings accounts from January 2014 to July 2015 and August 2015 to April 2017; quarterly credit card statements for 2014 and 2015 and others. He submitted that they show that there was no basis for an adverse inference to be drawn.

94 Leaving aside the prejudice to the Defendant who now has to deal with a case of the Plaintiff that is not the same as that at the Ancillary Matters hearing before the DJ, I am of the view that these documents still do not fully address all the reasons for the drawing of the adverse inference. For example, while the 2016 Notice of Assessment shows his taxable income from 2015, there is still no information on what he received from his former employer. Besides the gold medal, there is no indication if he received other retirement benefits, such as a lump sum pension, which do not normally appear in payslips as it is not a salary, that may be subject to different rules for taxation. Nor did the Plaintiff provide statements of a bank account that was revealed in his first Affidavit of Means, nor bank accounts which would show where the over $230,000.00 that he withdrew from his CPF Account have moved to.[38]

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[38] RC, at p 45, para 7(n).

95 In the result, I am of the view that an adverse inference should still be drawn against the Plaintiff for the continuing non-disclosure of certain documents even though he has disclosed other documents. The increase in the Defendant's share of the matrimonial properties by 10% ordered by the DJ was within her discretion based on the non-disclosure of the documents at the time of the Ancillary Matters hearing, and I do not see any reason to depart from it based on the non-disclosure of the documents at the appeal.

96 I now turn to whether the overall division of the assets is just and equitable in the light of parties' direct and indirect contributions.

97 If the structured approach in *ANJ v ANK* is used, the parties' direct and indirect contributions are as set out in the table below:

Type of contribution	**Plaintiff**	**Defendant**	**Total**
Direct Contributions			
Matrimonial flat ($)	186,271.24	-	186,271.24
Car ($)	73,898.00	-	73,898.00
CPF savings ($)	169,823.77	3,400.00	173,223.77
Other savings ($)	7,000.00	-	7,000.00
Total ($)	**436,993.01**	**3,400.00**	**440,393.01**
Percentage (%)	**99.23**	**0.77**	**100.00**
Indirect Contributions			
Percentage	**50.00**	**50.00**	**100.00**

(%)			
Average (%)	**74.62**	**25.38**	**100.00**

98 The difference between the above calculations and the DJ's calculation stems mainly from the exclusion of the $20,000.00 from the Defendant's direct contributions.

99 However, as I have pointed out at [18] above, this was a single income marriage. Accordingly, the approach in *TNL v TNK* should be used instead of the structured approach in *ANJ v ANK*. It is therefore not necessary for me to consider if different weightages should be given to the direct financial contributions and indirect contributions.

100 Having accepted that the marriage should be treated as one lasting 20 years, I am of the view that it would be just and equitable to give the Defendant 41% of the matrimonial assets. This is after taking into consideration the adverse inference drawn against the Plaintiff.

101 Based on the pool of matrimonial assets of $741,223.77, the Defendant's share will be $303,901.75, which is a little more than the $303,098.00 ordered by the DJ. Since there is no appeal by the Defendant, her share of the matrimonial assets will remain as that ordered by the DJ.

Apportionment of the Matrimonial Assets

102 As the Plaintiff has on 1 August 2016 withdrawn over $230,000.00 from his CPF Account, the option in the order of the DJ for the Plaintiff to transfer to the Defendant various amounts from his CPF Account (in the event he wishes to retain the matrimonial flat) is no longer available. With the only major matrimonial asset available for satisfying an order of the division of these assets

being the matrimonial flat, I order that it be sold within six months of this order, and for the net proceeds of sale to be used to do so.

103 The proceeds of sale, after deducting the relevant expenses incurred in the sale, shall be distributed as follows –

(a) $299,698.00 (being $303,098.00 - $3,400.00) to be paid to the Defendant;

(b) the Defendant is to retain her CPF savings of $3,400.00;

(c) 5.18% and 7.02% of the net proceeds of sale of the matrimonial flat to be paid to the 1st Intervener and 2nd Intervener, respectively, from the Plaintiff's share of the net proceeds of sale, with each of them to refund to their respective CPF accounts such amounts as are required under the CPF rules;

(d) the balance of the net proceeds of sale to be paid to the Plaintiff, with him to refund to his CPF account such amounts as are required under the CPF rules; and

(e) the Plaintiff is to retain his car, and other CPF and bank savings.

Maintenance for the Defendant

104 Regarding the quantum of maintenance, the Defendant asked for a maintenance amount of $850.00 per month, which was the amount ordered under the consent order in 2012, for a period of ten years. She asked that this be paid in a lump sum given the multiple times the Plaintiff has defaulted in making the maintenance payments ordered previously. The total amount was therefore

$102,000.00 ($850.00 x 12 x 10). The Plaintiff, on the other hand, asked that there be no maintenance, or that the amount should be reduced (GD, at [8]).

105 The DJ considered the factors set out in s 114 of the WC, and reviewed the expenses claimed by the Defendant when deciding the reasonable amount that she needs for maintenance. She reduced the monthly maintenance sum to $400.00. Taking note of the Plaintiff's health condition, she took the view that he could still work for another 10 years, and ordered a lump sum payment of $50,000.00 ($400.00 x 12 x 10, rounded up) (GD, at [8] and [9]).

106 I accept that unless the DJ has committed an error of law or principle, or failed to take into consideration crucial facts, it is not for an appellate court to interfere with the order and substitute what it views should be the correct amount for maintenance. In this regard, I do not think that the DJ was wrong in deciding that a fair amount for the Defendant's monthly maintenance was $400.00.

107 With regard to the period of maintenance, the Plaintiff submitted it should not exceed 3 years.[39] This is after taking into consideration: the length of the marriage, his age, that he has stopped working, his ill health and associated medical expenses, and the expenses to support his aged mother. He submitted that the Defendant's daughters can help to support her, especially when she is helping to look after her grandchildren.[40]

108 I am of the view that the DJ had not taken into consideration the Plaintiff's age and his actual employment status correctly when she considered him to be "gainfully employed" (GD, at [9]). In 2016, when the order was made,

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39 AC, at para 130.

40 AC, at paras 122 and 123.

the Plaintiff was already 61 years old. He had retired in March 2015,[41] and was on a contract of re-employment with his employer. A maintenance period of 10 years assumes that he is likely to be employed until 71 years old, and will receive the same or similar pay until he stops working eventually. I do not think that this is realistic, given that he was already suffering from Stage 4 cancer. The Plaintiff asked for the maintenance period not to exceed three years. I agree that a more appropriate period is three years from the date of the ancillary matters order. In doing so, I note that after the diagnosis and treatment that he received in 2014, a medical report in 2015 shows that it has spread.[42] He had also gone for a bone scan in 2016[43] and 2017.[44] I have also taken note that the Defendant was 57 years old in 2016, when the DJ made the order. However, she is in good health and will be able to seek gainful employment although not in a high paying job. Moreover, she will be receiving $303,098.00 from the division of the matrimonial assets.

109 I note the difficulties in the past for the Defendant in receiving the maintenance sums under the consent order of 2012, and that the Plaintiff's re-employment was terminated on 9 June 2017. I therefore order that the maintenance amount is to be paid as a lump sum from the Plaintiff's share of the proceeds of sale of the matrimonial flat. This amount of $14,400.00 ($400.00 x 12 x 3) is an amount which the Plaintiff will be in a position to pay using his share of the proceeds of sale of the matrimonial flat, and will not cripple him financially.

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41 Plaintiff's affidavit of 22 December 2015, at para 4 and p 21.

42 CB, Tab 29, p 133.

43 CB, Tab 29, p 131.

44 CB, Tab 28, p 127.

Conclusion

110 In the division of the matrimonial assets, this Appeal involves the consideration of evidence that was not before the DJ, for example, the documents on the financial contributions of the Interveners towards the matrimonial flat, and various documents on the finances of the Plaintiff from the banks, credit card companies, IRAS and the CPF. In the result, the case on appeal is a case that is different from the case that was before the DJ.

111 Having reviewed the case based on the additional evidence, the result is that the parties' shares of the matrimonial assets remains the same. However, since a large part of the CPF savings of the Plaintiff has been withdrawn and expended by him, the matrimonial flat will have to be sold, and the division of the matrimonial assets achieved through the distribution of the proceeds of sale.

112 For the maintenance for the Defendant, I have reduced the amount to $14,400.00. The order of the DJ is varied to that extent, and this amount will be paid by Plaintiff to the Defendant from the net proceeds of sale of the matrimonial flat.

113 In the result, the orders of the DJ that are being appealed against are set aside and replaced by the following orders:

> (a) The matrimonial property known as [redacted address] ("the matrimonial flat") shall be sold in the open market within 6 months from the date of this order. Parties shall have joint conduct of the sale and shall jointly value the matrimonial property. The sale proceeds after deducting the relevant expenses incurred in the sale of the property ("the net proceeds") shall be distributed as follows:

(i) $299,698.00 to be paid to the Defendant as her share of the matrimonial assets;

(ii) 5.18% of the net proceeds to be paid to the 1st Intervener;

(iii) 7.02% of the net proceeds to be paid to the 2nd Intervener;

(iv) $14,400.00 to be paid to the Defendant as her lump sum maintenance;

(v) Payments of any arrears of maintenance ordered under the 2012 consent order for maintenance; and

(vi) The balance to be paid to the Plaintiff.

(b) The Plaintiff and the Interveners to refund to their respective CPF accounts such amounts that are required under the CPF rules.

(c) The Defendant is to retain her CPF savings of $3,400.00.

(d) The Plaintiff is to retain his car, and other CPF and bank savings.

114 I will hear parties on costs.

Tan Puay Boon
Judicial Commissioner

Yeow Tin Tin Margaret and Jeanna Loe Yuqing (Hoh Law Corporation) for the Appellant;
Seenivasan Lalita and Tan Li Yi, Caleb (Virginia Quek Lalita &

Partners) for the Respondent;
Abdul Wahab Bin Saul Hamid and Jovita Ann Dhanaraj (IRB Law LLP) for the Interveners.
